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09/587,542	06/01/2000	Michael G. Luby	091812U2	6523
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QUALCOMM INCORPORATED 5775 MOREHOUSE DR. SAN DIEGO, CA 92121			BOUTAH, ALINA A	
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte MICHAEL G. LUBY*

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Appeal 2009-011058  
Application 09/587,542  
Technology Center 2400

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Before, ROBERT E. NAPPI, CARLA M. KRIVAK, and  
DAVID M. KOHUT, *Administrative Patent Judges*.

KOHUT, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 1-12. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse the Examiner's rejection of these claims.

## INVENTION

The invention is directed to apparatus and method for managing multicasting network traffic by reducing the send rate over time. *See Spec.*

6-7. Claim 1 is representative of the invention and is reproduced below:

1. In a network supporting packet multicasting from a sender into the network, where hosts join and leave a multicast group by sending join and leave messages, respectively, to an access device in the network, an improvement comprising:

a plurality of layers, wherein a layer is a logical channel that carries packets for the multicast group;

logic for distributing multicast traffic from the sender over the plurality of layers according to a sending rate associated with each of the plurality of layers;

logic for accepting join and leave messages at the access device from the hosts, wherein the join and leave messages are associated with one or more layers of the plurality of layers; and

logic for reducing the sending rate of at least one of the plurality of layers over time independent of receiver feedback.

## REFERENCES

Lorenzo Vicisano, et al., *TCP-like Congestion Control for Layered Multicast Data Transfer*, IEEE Infocom '98 (San Francisco, CA, Mar. 29-Apr. 2, 1998) ("Vicisano").

Chiu

US 6,505,253 B1

Jan. 7, 2003

(filed June 18, 1999)

## REJECTION AT ISSUE

Claims 1-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Vicisano in view of Chiu. Ans. 4-9.

## ISSUE

Appellant argues on pages 8-10 of the Appeal Brief and pages 2-3 of the Reply Brief that the Examiner’s rejection of claims 1-12 is in error. These arguments present the following issue: Did the Examiner err in finding that Vicisano in view of Chiu discloses reducing the sending rate of layers over time independent of receiver feedback?<sup>1</sup>

## ANALYSIS

Claim 1 requires the sending rate of at least one of the layers to be reduced independent of receiver feedback. Independent claims 3 and 8 contain similar limitations. Claims 2, 4-7, and 9-12 depend upon claims 1, 3, or 8. The Examiner finds that Chiu discloses a system wherein bits are transmitted for a particular period of time (a window), not transmitted for a period of time, transmitted for a period of time, etc., indicating that the transmission rate is reduced or increased as time passes. Additionally, the Examiner finds that Chiu’s system operates in an “insensitive” mode, wherein the transmission rate is adjusted independent of receiver feedback. Thus, the Examiner finds that Chiu reduces the transmission rate over time independent of receiver feedback. Ans. 10. We disagree.

We agree with Appellant that the Examiner is misinterpreting the reference and that Chiu does not disclose reducing the transmission rate when operating in the insensitive mode. Reply Br. 3. While feedback from the receivers is not used in Chiu’s insensitive mode (col. 24, ll. 33-35), we do not find any evidence to support the Examiner’s conclusion that

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<sup>1</sup> Appellant makes additional arguments with respect to claims 1, 3 and 8. App. Br. 9. However, we do not reach these additional issues since this issue is dispositive of the case.

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transmission rates are reduced when the system is operating in this mode, as required by the independent claims. Thus, we cannot sustain the Examiner's rejection of claims 1-12.

#### CONCLUSION

The Examiner erred in finding that Vicisano in view of Chiu discloses reducing the sending rate of layers over time independent of receiver feedback.

#### SUMMARY

The Examiner's decision to reject claims 1-12 is reversed.

#### REVERSED

msc